

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	MM Docket No. 91-58
)	
Amendment of Section 73.202(b))	RM-7419
Table of Allotments)	RM-7797
FM Broadcast Stations)	RM-7798
(Caldwell, Texas, et al))	

To: The Commission

SUPPLEMENT TO COMMENTS ON REMAND

Bryan Broadcasting License Subsidiary, Inc. ("Bryan"), the licensee of KTSR(FM), hereby supplements its Comments on the Remand of this proceeding. By Order dated March 8, 1999, the Court of Appeals remanded this case to the Commission, at the request of the Commission, to allow the agency to address an issue which it had overlooked in its previous decision in this matter. Specifically, the Commission is to address the question of whether Bryan's specification, in an application filed after the effective date of the rulemaking decision, of a transmitter site which did not place a city-grade signal over all of College Station, was a decisionally significant matter. Bryan has previously argued that, based on established Commission precedent, that application has no significance to the allocations rulemaking. In cases such as Greenwood, South Carolina, 3 FCC Rcd 4108 (1988), the Commission has specifically stated that it is only at the allotment stage that a failure to fully cover a proponent's city of license is a fatal defect, and provided a full justification of the differing treatments of allotment requests and application filings. In this case, as only Henderson's proposal suffered

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from such a defect at the allotment stage, the Commission's initial decision was correct, and the upgrade of KTSR was properly granted by the Commission.

To demonstrate the wisdom of the policy behind the Commission's precedent, on April 19, 1999, Bryan submitted an application to the Commission requesting a modification of its proposed transmitter site. The proposed site would have fully covered College Station with a city-grade signal. Unfortunately, that site proved to have other difficulties, as the FAA rejected the applicant's request for a determination of no hazard to air navigation. However, on September 1, 1999, Bryan submitted an amendment to its application, locating another transmitter site which fully covered College Station with a city-grade signal. Attached hereto is a letter addressed to the Commission's processing staff, notifying it that the site specified in the September 1 amendment has been approved by the FAA. A tower registration request will be filed with the FCC as soon as the FAA determination is final.

Thus, Bryan has located not one, but two sites which are capable of fully covering the city of license of KTSR with a city-grade signal. One of these sites has now received FAA approval and, upon the receipt of appropriate FCC approval, Bryan can commence construction at that site. In contrast, Henderson is unable to locate any site which is predicted to place a city-grade signal over its city of license and, in the allocations process, even using an alternative prediction method totally dependant on the use of a very specific transmitter site, it still cannot do better than 96% coverage of Caldwell. Should the specific site on which Henderson relies in the allotment proceeding for any reason not be available to Henderson, there will be no opportunity to cover his city of license with anything approaching a city-grade signal. A deficient signal at the allotment stage can only stay deficient, while a deficient signal made at the application stage can always be improved if the allotment itself was properly made, as Bryan has demonstrated.

Thus, there is no reason that the Commission's grant of the Bryan request for the allotment of channel 235C2 to College Station should not be upheld. Henderson, in his last pleading filed on September 15, attempted to gin up some new reasons for denying KTSR's application, and no doubt he will attempt to raise new issues in response to this filing. However, they should be accorded no more weight than the ludicrous assertions made in Henderson's last filing. There, he made two assertions which were simply and plainly wrong.

First, Henderson claims that the Bryan application violated Section 73.207 of the Commission's rules because the proposed site was shortspaced to station KYKR(FM) in Beaumont, Texas. Clearly, Henderson did not even bother to read Bryan's engineering report in which it was clearly stated that it was KYKR which shortspaced KTSR's allotment, and not KTSR which shortspaced KYKR. As set out in Section 2.0 of the Engineering Report accompanying Bryan's September 1, 1999 amendment, using the provisions of Section 73.215, KYKR requested a transmitter site shortspaced to the KTSR allotment. As KYKR employed Section 73.215, the mileage separation to it is irrelevant; that station need only be protected to its contour. That is what Bryan did; thus there is no violation of Section 73.207 as alleged by Henderson.

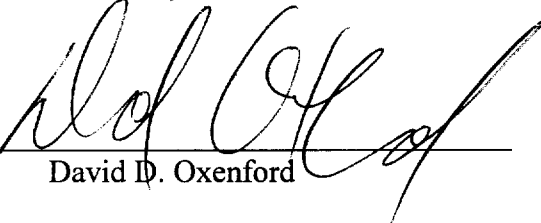
The second allegation was both irrelevant and incorrect. Henderson, based on a press report, claims that AM-FM Broadcasting was planning the sale of KTSR. Whether or not a sale was planned is irrelevant to the proceeding at hand. But more importantly, the report is totally inaccurate. First of all, AM-FM has no ownership in KTSR, and thus that company clearly cannot be expecting to sell a station it does not own. In fact, Inside Radio, the publication from which Henderson received its information, just days later published a retraction, a retraction

which Henderson has conveniently never bothered to report to the Commission. A copy of the retraction is attached hereto.

Thus, the Commission's allotment decision was a proper one, and should be upheld. Bryan Broadcasting has shown that it can construct a station which fully covers its city of license. While this should never have been an issue in the first instance, even if relevant, there is no issue remaining. Bryan's rulemaking proposal should be granted, and the fatally flawed proposal of Henderson must, consistent with precedent, be rejected.

Respectfully submitted,

BRYAN BROADCASTING LICENSE
SUBSIDIARY, INC.

By: 
David D. Oxenford

Its Attorney

FISHER WAYLAND COOPER LEADER
& ZARAGOZA L.L.P.
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006
(202) 659-3494

Dated: November 24, 1999

ATTACHMENTS

INSIDE RADIO®

Friday, September 17, 1999

Published by Jerry Del Colliano/609-424-6800

Inside Exclusive: Jimmy de Castro's new AMFM cluster strategy. As outlined in a closely-held memo to his top management team. AMFM moving quickly toward a system of market managers (with the creation of Cluster Vice President). A system similar to Clear Channel – the company widely believed to be purchasing at least AMFM's big markets where they are void and perhaps other cities too. From the memo: "We are now in the process of identifying Cluster VP candidates and conducting interviews. The new Cluster VP's will be meeting as a group for the first time in Chicago on October 5, 1999. As you can see we are moving quickly." Jimmy de Castro holding employee focus groups on the concept in New York, Chicago and Los Angeles hiring an independent consulting firm to conduct the research. Results will be used to refine and implement the new cluster strategy. Clear Channel and former Jacor radio head Randy Michaels has been skillful at using this concept to maximize revenue. Michaels becoming a great asset to Clear Channel as far as Wall Street is concerned for his ability to use the concept to squeeze big revenue increases out of his clusters.

Spanish Broadcasting's road show to start in about two weeks. Insiders say it will commence the week of September 27th. Pricing for the new public offering due about mid-October. It's a \$300 million IPO with \$250 million of primary shares. Spanish Broadcasting insiders will be selling approximately \$50 million in shares. Too early to tell what the target price is but analysts predict the stock will price at around 22 times cash flow increasing to 30 times when it starts trading. Actual target price will depend on the number of shares offered and other considerations. Sweet spot seems to be between \$20-30 a share. Wall Street is still very excited about the upcoming IPO. Hispanic Broadcasting is growing a bit expensive for some portfolio managers but they want to keep their money in this growing niche. Lehman Brothers is the lead bank underwriting the deal.

GM sues owner for control of WZEW-FM, Mobile. Manager William Phillips switched the format from rock to 80's without owner Barry Wood's okay last weekend. Wood switched it back by the next morning. Then the fur began to fly. Wood claims GM Phillips has been moving people between stations (Wood owns both rock WZEW-FM and oldies WAVH-FM in the market) without clearing the changes with Wood. Phillips claims he has been running the stations without Wood's input for seven years. Cumulus has reportedly made an offer of \$8.1



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INSIDE RADIO/BREAKING NEWS

Friday, September 17, 1999

Page 3 of 4

VSB, cannot be decoded in a mobile receiver. Nokia is lobbying for the US to switch to Europe's DVB standard with support from many local broadcasters.

Scott Taylor leaves Tribune's KOSI-FM, Denver after ten years as PD. Taylor looking to stay in the market perhaps in consulting or another PD role. VP/GM David Juris has named Programming Manager Steve Hamilton as the Interim PD until a permanent replacement is found. Tribune also owns classic rock KKHK-FM and nostalgic KEZW-AM in the market.

Correction. In the Monday, September 13th edition of *Inside Radio* the story "Cumulus, NextMedia both bid \$65 for AMFM Capstar leftovers" attributed stations in Bryan-College Station to AMFM. KTSR-FM and WTAW-AM are actually 90% owned by AMFM CEO Tom Hick's brother Bill Hicks.

AMFM gains over three points as Dow falls 63.96. Lamar closing has helped AMFM. Some investors have been shorting AMFM and longing Lamar. Prices converged today. Dow closed at 10,737.46. Nasdaq was off 7.45 points to close at 2,806.72. Other radio gainers: Clear Channel was up almost a point and a half. Salem and Emmis were both up over a point. Cumulus fell over two points. Citadel was down over a point and a half. *Inside Radio* stock average was up slightly: 0.087.

	Vol(00)	Close	+/-	High	Low		Vol(00)	Close	+/-	High	Low
AMFM*	6187	55.563	+3.062	59.375	18.625	Infinity*	6192	27.188	+0.125	33.500	21.875
Big City	1	4.125	-0.125	6.375	3.000	Jeff Pilot	971	66.062	-0.188	78.375	55.375
CBS*	19542	48.156	-0.156	51.938	18.000	Metro Net	131	71.406	+0.281	74.375	28.000
CD Radio	965	30.938	+0.062	39.875	14.250	Radio One*	145	43.438	-0.062	47.000	28.000
Ceridian	6735	27.250	-0.688	40.500	24.000	Regent	50	7.500	+0.563	8.250	3.500
Citadel*	1446	35.125	-1.625	39.750	14.875	Saga*	25	22.750	-0.125	23.500	14.625
Clr Channel*	7154	76.875	+1.438	79.250	31.000	Salem*	246	26.250	+1.250	31.125	21.375
Cox*	31	57.125	-0.500	60.750	26.250	Sinclair*	6374	16.000	-0.250	21.500	6.750
Cumulus*	1097	29.500	-2.375	32.250	4.875	Viacom	1642	44.688	+0.375	49.625	25.438
Disney	31114	27.500	0.000	38.688	22.500	Westwood One	806	48.062	+0.250	50.000	15.813
Emmis*	1105	63.625	+1.125	63.125	22.125	Radio Stocks	51152	44.573	+0.087	-	-
Entercom*	262	40.625	-0.500	42.750	28.312	Dow	776493	10737.46	-63.96	11365.93	7467.49
Hispanic*	1346	81.813	-0.188	88.000	28.250	Nasdaq	9150013	2806.72	-7.45	2897.53	1357.09

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Publisher: Jerry Del Colliano (jerry@insideradio.com)

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FISHER WAYLAND COOPER LEADER & ZARAGOZA L.L.P.
2001 PENNSYLVANIA AVENUE, N.W.
SUITE 400
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TELEPHONE (202) 659-3494

DAVID D. OXENFORD
(202) 775-3546

FACSIMILE
(202) 296-6518

EMAIL
doxenford@fwclz.com

WEBSITE
www.fwclz.com

November 24, 1999

Ms. Magalie R. Salas, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554
ATTN: Common Carrier Bureau

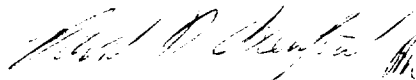
Re: Application for Minor Change
KTSR(FM) College Station, Texas (FIN-7631)
FCC File No. BMPH-9904191B

Dear Ms. Salas:

Bryan Broadcasting License Subsidiary, by its attorneys, hereby files the attached FAA Determination of No Hazard to Air Navigation. That determination should be considered in connection with the above-referenced application. A Tower Registration will be sought from the FCC upon the finality of this FAA determination.

Should there be any questions concerning this matter, please contact the undersigned.

Sincerely,



David D. Oxenford

DDO/sad
Enclosure

J:\DATA\CLIENT\1711745\FCC.LTR

Federal Aviation Administration
Southwest Region
Air Traffic Division, ASW-520
Fort Worth, TX 76193-0520

AERONAUTICAL STUDY
No: 99-ASW-3191-OE
PRIOR STUDY
No: 99-ASW-1384-OE

ISSUED DATE: 10/28/99

BEN DOWNS
RADIO STATION KTSR
P O BOX 3248
BRYAN TX 77805

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has completed an aeronautical study under the provisions of 49 U.S.C., Section 44718 and, if applicable, Title 14 of the Code of Federal Regulations, part 77, concerning:

Description: ANTENNA TOWER / 95.1 MHZ @ 50KW

NEW TOWER

Location: BRYAN TX

Latitude: 30-45-18.70 NAD 83

Longitude: 096-24-23.87

Heights: 460 feet above ground level (AGL)
845 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure would have no substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on the operation of air navigation facilities. Therefore, pursuant to the authority delegated to me, it is hereby determined that the structure would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

-As a condition to this determination, the structure should be marked and/or lighted in accordance with FAA Advisory Circular 70/7460-1J, Obstruction Marking and Lighting, Chapters 3(Marked), 4, 5(Red), & 13.

-It is required that the enclosed FAA Form 7460-2, Notice of Actual Construction or Alteration, be completed and returned to this office any time the project is abandoned or:

___ At least 10 days prior to start of construction
(7460-2, Part I)

X Within 5 days after construction reaches its greatest height
(7460-2, Part II)

-See attachment for additional condition(s) or information.

This determination expires on 06/07/01 unless:

- (a) extended, revised or terminated by the issuing office or
- (b) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case the determination expires on the date prescribed by the FCC for completion of construction or on the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE POSTMARKED OR DELIVERED TO THIS OFFICE AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE.

-As a result of this structure being critical to flight safety, it is required that the FAA be kept apprised as to the status of this project. Failure to respond to periodic FAA inquiries could invalidate this determination.

This determination is subject to review if an interested party files a petition on or before 11/27/99. In the event a petition for review is filed, it must contain a full statement of the basis upon which it is made and be submitted in triplicate to the Manager, Airspace & Rules Division, ATA-400 Federal Aviation Administration, Washington, D.C. 20591.

This determination becomes final on 12/07/99 unless a petition is timely filed. In which case, this determination will not become final pending disposition of the petition. Interested parties will be notified of the grant of any review.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, frequency(ies) or use of greater power will void this determination. Any future construction or alteration, including increase in heights, power, or the addition of other transmitters, requires separate notice to the FAA.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

This aeronautical study considered and analyzed the impact on existing and proposed arrival, departure, and en route procedures for aircraft operating under both visual flight rules and instrument flight rules; the impact on all existing and planned public-use airports, military airports and aeronautical facilities; and the cumulative impact resulting from the studied structure when combined with the impact of other existing or proposed structures. The study disclosed that the described structure would have no substantial adverse effect to air navigation.

An account of the study findings, aeronautical objections received by the FAA during the study (if any), and the basis for the FAA's decision in this matter can be found on the following page(s).

A copy of this determination will be forwarded to the Federal Communications Commission if the structure is subject to their licensing authority.

If we can be of further assistance, please contact our office at 817-222-5534. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 99-ASW-3191-OE.


Robert Stevens
Manager, Airspace Branch

(DNH)

7460-2 Attached
Attachment

The proposed construction would be located approximately 4.48 nautical miles (NM) northwest of the Coulter Field Airport, Bryan, Texas. It would exceed the obstruction standards of Title 14 of the Code of Federal Regulations, part 77 as follows:

- Section 77.23(a)(2) by 112 feet - a height that exceeds 348 feet above ground level within 4.48 NM as applied to the Coulter Field Airport.

The proposal was not circularized for public comment because current FAA obstruction evaluation policy exempts from circularization those proposals which exceed the above cited obstruction standard. This is provided the proposal does not lie within an airport traffic pattern. This policy does not effect the public's right to petition for review determinations regarding structures, which exceed the subject obstruction standards.

AERONAUTICAL STUDY FOR POSSIBLE INSTRUMENT FLIGHT RULES (IFR) EFFECT DISCLOSED THE FOLLOWING:

- > The proposed structure would have no effect on any existing or proposed IFR arrival/departure routes, operations, or procedures.
- > The proposed structure would have no effect on any existing or proposed IFR en route routes, operations, or procedures.
- > The proposed structure would have no effect on any existing or proposed IFR minimum flight altitudes.

AERONAUTICAL STUDY FOR POSSIBLE VISUAL FLIGHT RULES (VFR) EFFECT DISCLOSED THE FOLLOWING:

- > The proposed structure would have no effect on any existing or proposed VFR arrival or departure routes, operations or procedures.
- > The proposed structure would not conflict with airspace required to conduct normal VFR traffic pattern operations at any known public use or military airports.
- > The proposed structure would not penetrate those altitudes normally considered available to airmen for VFR en route flight.

> The proposed structure will be appropriately obstruction marked and lighted to make it more conspicuous to airmen flying in VFR weather conditions.

The cumulative impact of the proposed structure, when combined with other existing structures is not considered significant. Study did not disclose any adverse effect on existing or proposed public-use or military airports or navigational facilities. Nor would the proposal affect the capacity of any known existing or planned public-use or military airport.

Therefore, it is determined that the proposed construction would not have a substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on any air navigation facility and would not be a hazard to air navigation.

This determination, issued in accordance with part 77, concerns the effect of the proposal on the safe and efficient use of the navigable airspace by aircraft and does not relieve the sponsor of any compliance responsibilities relating to laws, ordinances, or regulations of any Federal, state, or local governmental bodies. Determinations, which are issued in accordance with part 77, do not supersede or override any state, county, or local laws or ordinances.

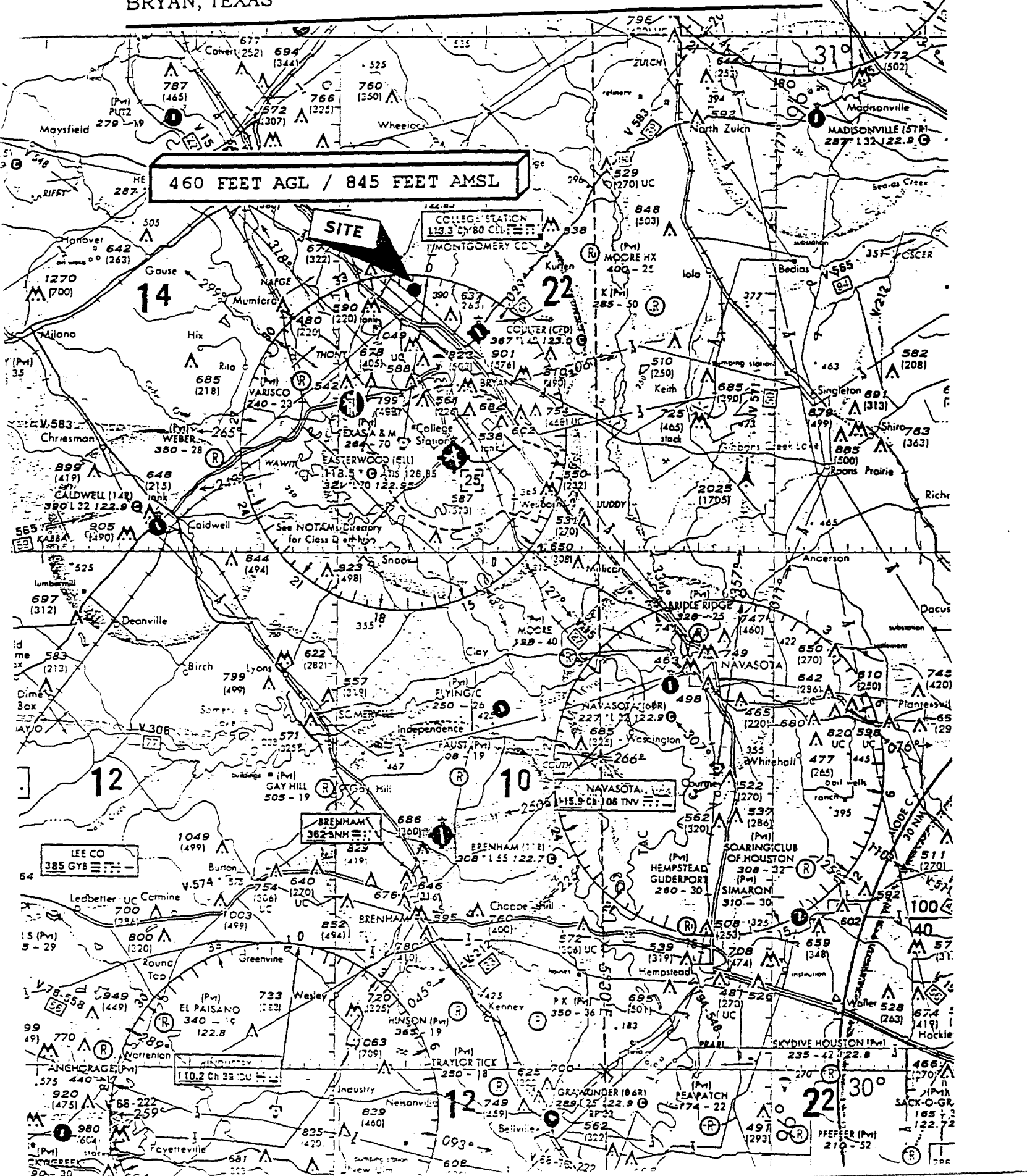
AERONAUTICAL STUDY NUMBER 99-ASW-3191-OE
BRYAN, TEXAS

PAGE 5

460 FEET AGL / 845 FEET AMSL

SITE

COLLEGE STATION
113.3 CH 60 CH 113.3



CERTIFICATE OF SERVICE

I, Nora Luersen, do hereby certify that I have this 24th day of November, 1999, mailed by first-class United States mail, postage prepaid, copies of the foregoing “**Supplement to Comments on Remand**” to the following:

Christopher Wright, Esq.*
Office of the General Counsel
Federal Communications Commission
445 12th Street, S.W., Room 8-C755
Washington, D.C. 20554

Gregory M. Christopher, Esq.*
Office of the General Counsel
Federal Communications Commission
445 12th Street, S.W., Room 8-A814
Washington, D.C. 20554

Robert Hayne, Esq.*
Federal Communications Commission
Mass Media Bureau, Allocations Branch
445 12th Street, S.W., Room 3-A262
Washington, D.C. 20554

Robert J. Buenzle, Esq.
Law Offices of Robert J. Buenzle
12110 Sunset Hills Road, Suite 450
Reston, VA 20190

Christopher Sprigman, Esq.
U.S. Department of Justice
Antitrust Division
Appellate Section, Room 10535
Patrick Henry Building
601 D Street, N.W.
Washington, D.C. 20530

Meredith S. Senter, Esq.
Leventhal, Senter & Lerman, P.L.L.C.
2000 K Street, N.W., Suite 600
Washington, D.C. 20006-1809

***Hand Delivery**

Judith A. Mather, Esq.
Dow, Lohnes & Albertson, P.L.L.C.
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036-6802



Nora Luersen